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DIVISION II

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STATE OF WASHINGTON

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No. 37985-6-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent,

vs.

JACKLYNN YOUNG, Appellant.

APPELLANT'S OPENING BRIEF

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I. ASSIGNMENTS OF ERROR

1. The trial court erred, as a matter of law or as an abuse of discretion, in denying appellant's motion to expunge and/or destroy court records of a criminal charge filed against appellant as an adult that did not result in a conviction.

2. The trial court erred in finding that defendant's nine year old "conviction" in juvenile court proceedings was a bar to expungement and destruction of criminal charges filed against her as an adult that did not result in conviction.

3. Appellant assigns error to finding of fact 3 (CP 41):

"That defendant has a record of a juvenile conviction in 1999 for Theft in the Third Degree, a gross misdemeanor."

4. Appellant assigns error to finding of fact 4 (CP 41):

"That the 1999 Theft conviction is grounds under RCW 10.97.060 to deny defendant's motion;"

5. Appellant assigns error to finding of fact 5 (CP 41):

"That RCW 13.04.240 does not nullify the conviction's impact on RCW 10.97.060(2);"

6. Appellant assigns error to finding of fact 6 (CP 41);

"That RCW 13.04.011(1) applies in that RCW 13.04.011(1) defines a juvenile "adjudication" as a "conviction" under the meaning of RCW 10.97.060."

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Where the prosecution moved for and had dismissed without prejudice criminal charges that had been filed against

appellant, the three-year statute of limitations ran so that appellant could not be recharged, and appellant moved to have the court file sealed and/or destroyed claiming potential employers and landlords were accessing the non-conviction information regarding the criminal charges and using it against her, did the trial court have a non-discretionary duty under the Criminal Records Privacy Act, Chapter 10.97 RCW, to grant appellant's motion to expunge and/or destroy the court records of said criminal charge that did not result in conviction?

2. Did the trial court mis-interpret RCW 13.04.240 and RCW 13.40.240, the juvenile justice act statutes that specifically provide that no delinquency finding shall be deemed "conviction of a crime," in holding that such a juvenile finding would permit a trial court to exercise discretion under RCW 10.97.060(2) and thereby authorize the court in the exercise that discretion to deny a motion to expunge and/or destroy court records of subsequent adult criminal charges that did not result in conviction and were non-conviction data?

3. Alternatively, where a criminal charge did not result in conviction, and the Criminal Records Privacy Act, Chapter 10.97 RCW, prohibits dissemination of such non-conviction data, did the trial court abuse its discretion in using appellant's nine-year-old juvenile offense conviction record to justify denying appellant's

motion to expunge and/or destroy the non-conviction data that was being disseminated and used against her?

4. Did the trial court's findings of fact set out a correct interpretation of the statutes?

5. Did the trial court's findings of fact support the court's decision to deny appellant's motion to expunge and/or destroy the non-conviction court records?

6. In view of statutes and case law, does the appellant's juvenile conviction equate to a "conviction of a gross misdemeanor" to justify finding of fact number 3?

7. Are findings of fact 4, 5, and 6 actually conclusions of law, and if so, are they justified by the facts in this case?

III. STATEMENT OF FACTS

On March 29, 2005, the state filed criminal charges against 22 year old appellant alleging violations of RCW 9A.36.140(1), RCW 9A.36.031(1)(d), and RCW 10.99.020, class C felonies. On October 27, 2005, on the state's motion, the court dismissed all of the charges without prejudice. CP 3-4. The statute of limitations for class C felonies is 3 years after the commission of the act and has expired in this case such that the charges cannot be re-filed against appellant. CP 26, 4. All records related to the said charges are "non-conviction data", not having led to a conviction. CP 3-4.

Appellant applied pro se to the superior court to expunge the

court record of the charges. CP 5. Before the matter was heard, appellant obtained the services of current counsel to assist in her request. CP 14.

Counsel filed an amended motion, asking the court to seal *and* destroy the court records. CP 7-15. The amended motion was grounded in GR 15(h), Chapter 10.97 RCW, the Criminal Records Privacy Act, RCW 43.43.700, et seq., and various case law. CP 9-13.

At the hearing held after full briefing, the trial court exercised its discretion and denied appellant's request based primarily on the fact that appellant had a 1999 juvenile offense theft conviction that had not been expunged from her juvenile records. CP 41.

By declaration, appellant alleged that the current adult non-conviction records pertaining to the charges are available to the general public through the court records on various web-sites and from the court records maintained by the court clerk. CP 14-15. The said non-conviction data is not accessible through a criminal background check addressed to the Washington State Patrol. CP 11-12.

Appellant's declaration stated that as a consequence of the non-conviction data being available to the general public, she has been denied some housing and employment opportunities. CP 14-15. However, the agencies who were utilizing said non-conviction data

refused to provide documentation of that fact to her or the court.¹

In addition to being denied housing and employment, appellant's declaration alleged that she is treated with disdain and condemnation in her social activities and interaction with the general public whenever private citizens come to know of the filed charges even though those charges did not result in conviction. *Id.*

The court denied appellant's motion to expunge and/or destroy non-conviction court records. CP 41-42. Appellant filed a Notice for Discretionary Review in the Court of Appeals, Division II. CP 43-45. This court determined that appellant had an appeal of right.

IV. LEGAL AUTHORITIES AND ARGUMENT

A. Standard of Review:

Where a statute imposes a non-discretionary duty upon the court, review of an adverse decision is a question of law. Questions of law and conclusions of law are reviewed de novo. *Angelo v. Angelo*, 142 Wn.App. 622, 175 P.3d 1096 (2008); *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

Interpretation of a statute is a question of law that is also reviewed de novo. *Coalition For The Homeless v. DSHS*, 133 Wn.2d 894, 949 P.2d 1291 (1997). Issues of statutory construction

¹ Criminal culpability and civil liability can attach to improper dissemination of non-conviction data. RCW 10.97.110 and 120.

related to evidence sufficiency are reviewed de novo. *City of Redmond v. Moore*, 151 Wn.2d 664, 668, 91 P.3d 875 (2004); *State v. Jackson*, 145 Wn.App. 814, 818, 187 P.3d 321 (2008) (citing *State v. Watson*, 146 Wn.2d 947, 954, 51 P.3d 66 (2002)).

A court's objective in construing a statute is to determine and give effect to the legislature's intent and purpose. *State v. Cromwell*, 157 Wn.2d 529, 534, 140 P.3d 593 (2006). "[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 909, 154 P.3d 882 (2007) (quoting *Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.3d 1020 (2007)). If a term is not statutorily defined, the term is given its ordinary or common law meaning. *State v. Alvarez*, 128 Wn.2d 1, 11, 904 P.2d 754 (1995). A court must, when possible, "give effect to every word, clause and sentence of a statute." *Cox v. Helenius*, 103 Wn.2d 383, 387, 693 P.2d 683 (1985).

Where the court has discretion to grant or deny a motion, review is for abuse of discretion. A discretionary decision or order of the trial court "will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971); *Angelo v. Angelo, supra*.

B. The statutes require that appellant's motion to expunge and/or destroy court records be granted and the trial court erred as a matter of law in denying that motion.

Appellant, Ms. Young, was and is sustaining a serious wrong for which the statute gives her both a civil and criminal remedy. RCW 10.97.110 and RCW 10.97.120. When the State of Washington enacted the Criminal Records Privacy Act, Chapter 10.97 RCW, it could very well have had Ms. Young's situation in mind. However, at the time of enactment, the legislature could not know or even contemplate the pervasiveness of widespread internet access to information, particularly court records. Now Ms. Young is in the position of having the right to assert a civil lawsuit and the right to prefer criminal charges against persons who disseminate her non-conviction data, but she has no way to identify who those persons are that access the internet. Therefore, she turned to the statute that protects her right to privacy from dissemination of non-conviction data to shield her reputation, Chapter 10.97 RCW, coupled with the Washington State Supreme Court promulgation of GR 15, particularly subsection (h).

RCW 10.97.060 of the Criminal Records Privacy Act protects citizens and their reputations from inquiry into and dissemination of non-conviction data. It reads in pertinent part:

Criminal history record information which consists of nonconviction data only shall be subject to deletion from

criminal justice agency files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a named or otherwise identified individual when two years or longer have elapsed since the record became nonconviction data as a result of the entry of a disposition favorable to the defendant, or upon the passage of three years from the date of arrest or issuance of a citation or warrant for an offense for which a conviction was not obtained unless the defendant is a fugitive, or the case is under active prosecution according to a current certification made by the prosecuting attorney.

Such criminal history record information consisting of nonconviction data *shall be deleted upon the request of the person who is the subject of the record*; PROVIDED, HOWEVER, That the criminal justice agency maintaining the data may, at its option, refuse to make the deletion if:

...

(2) The person who is the subject of the record has had a prior conviction for a felony or gross misdemeanor;

...

RCW 10.97.060 (Italics and emphasis supplied).

GR 15(h) reads, in pertinent part:

(h) Destruction of Court Records

(1) The court shall not order the destruction of any court record unless expressly permitted by statute. The court shall enter written findings that cite the statutory authority for the destruction of the court record.

(2) . . . In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to destroy the court records only if there is express statutory authority permitting the destruction of the court records. . . .

GR 15(h) in part.

The court utilized subsection RCW 10.97.060(2) to justify denying Ms. Young's application for expungement and destruction of a court file that contains criminal charges, affidavit of probable cause plus a variety of other pleadings, including the order of

dismissal. The general public has need to know the contents of that file. In fact, since all information in the court file became non-conviction data when the case was dismissed and the statute of limitations ran, the Criminal Records Privacy Act prohibits dissemination of that information under civil and/or criminal penalties. Yet, the court itself disseminates the information to anyone that accesses that information through the court file and on the internet. The trial court's reason to refuse to seal or destroy the court records under GR 15(h) was because of a juvenile offense conviction on Ms. Young's record from nine years previously.

The issues for review:

The appeal basic issue for review then is interpretation of a statute, a question of law, i.e., may the court utilize a nine year old juvenile offense conviction to nullify the mandate of RCW 10.97.060 that court records "shall be deleted upon the request of the person who is the subject of the record . . .," based on the exception to that mandate contained in RCW 10.97.060(2) that the court may, at its option, refuse to make the deletion if "The person who is the subject of the record has had a **prior conviction** for a felony or gross misdemeanor . . ." (Emphasis added.)

Under RCW 10.97.060, the grant of "deletion" of the record is made mandatory by use of the word "shall." *Marriage of Wolk*, 65 Wn.App. 356, 828 P.2d 634 (1992). The exception justifying court

discretion to deny deletion is permissive authority by use of the word "may." RCW 10.97.060. Additionally, the final paragraph of RCW 10.97.060 explicitly authorizes the trial court to grant deletion of records as a discretionary matter.² The secondary issue of whether Ms. Young's juvenile offense conviction constituted a "prior conviction for . . . a gross misdemeanor . . ." a question of statutory interpretation.

The answer to the issue is: **No.** First, a juvenile offense that would be a gross misdemeanor if committed by an adult is not a crime unless committed by an adult—Ms. Young was a juvenile. RCW 13.40.020(19). RCW 13.04.240 specifically states that "An order of court adjudging a child delinquent or dependent under the provisions of this chapter *shall in no case be deemed a conviction of crime.*" RCW 13.40.240 specifically states that "All references to juvenile delinquents or juvenile delinquency in other chapters of the Revised Code of Washington shall be construed as meaning juvenile offenders or the commitment of an offense by juveniles as defined by this chapter." RCW 13.40.240. "This chapter" defines a juvenile

² The final paragraph of RCW 10.97.060 reads:

"Nothing in this chapter is intended to restrict the authority of any court, through appropriate judicial proceedings, to order the modification or deletion of a record in a particular cause or concerning a particular individual or event."

offense as: "Offense" means an act designated a violation or a crime if committed by an adult under the law of this state, under any ordinance of any city or county of this state, under any federal law, or under the law of another state if the act occurred in that state;" RCW 13.40.020(19). See also RCW 13.04.011(3) "Juvenile offender" and "juvenile offense" have the meaning ascribed in RCW 13.40.020.

Second, Ms. Young's juvenile records could have and should have been eradicated a few years before her request herein. RCW 13.50.050(22)(a). Her diversion was terminated in September, 1999; she attained 18 years of age February 8, 2001; more than two years passed prior to the filing of charges herein. If her juvenile record was not "routinely destroyed" under RCW 13.50.050(22)(a), then it should have been because the court was authorized to "develop procedures for the routine destruction of records relating to juvenile offenses and diversions." RCW 13.50.050(22).

Third, the Criminal Records Privacy Act, and specifically RCW 10.97.060 references "a felony or gross misdemeanor." It does not refer to an "offense" or make any other reference to a juvenile "conviction." In each case where an appellate court has determined that a juvenile's record may be used to impose some type of penalty or intrusive action involving the juvenile, the statutes authorizing such utilization of a juvenile's offense record used explicit language that either included "juvenile" or "offense." See *State v. Cheatham*,

80 Wn.App. 269, 908 P.2d 381 (1996)(the term "crime of violence" in former RCW 9.41.040(1) applies to both juvenile dispositions and adult convictions for the offenses listed there. . .); *State v. Q.D.*, 102 Wn.2d 19, 685 P.2d 557 (1984)(The crime victims compensation act expressly and unambiguously provides for the application of the penalty in juvenile dispositions); *In re A, B, C, D, E*, 121 Wn.2d 80, 847 P.2d 455 (1993)(. . .the HIV testing statute does not use the word "felony"; it uses the broader term "offense", which does apply to juveniles); *State v. Acheson*, 75 Wn.App. 151, 877 P.2d 217 (1994)(the requirement to register as a sex offender applies to juveniles because they are specifically listed in the statute.) Some of the specific statutes are RCW 46.61.5054(c) "When a minor has been adjudicated a juvenile offender for an offense which, if committed by an adult, would constitute a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall assess the one hundred twenty-five dollar fee under (a) of this subsection."

...

There is no such language contained in RCW 10.97.060, the Criminal Records Privacy Act. That statute specifically refers to ". . . prior conviction for a **felony or gross misdemeanor**; . . ." RCW 10.97.060, emphasis added. It does not mention "juvenile" or "offense." Therefore, Ms. Young's juvenile offense conviction was not a crime because she was not an adult; none of the exceptions to

RCW 13.04.240 are applicable in this case. The trial court erred as a matter of law and/or as an abuse of discretion in denying Ms. Young's motion to destroy the court's non-conviction data records pertaining to her.

Abuse of Discretion:

If this court disagrees with the standard of review being de novo because it is statutory construction and a question of law, then the trial court abused its discretion in denying Ms. Young the relief she requested. Ms. Young is eligible under the statute for expungement and/or destruction of the court files containing totally non-conviction data, even if the court is concerned that her juvenile record should preclude such relief. No other valid reason was given. In the recent case of *John Doe v. Bellevue School District #405*, 164 Wn.2d 199, 189 P.3d 139 (2008), our Supreme Court stated, about the privacy rights of teachers who were the subject of unsubstantiated allegations and no restriction or discipline occurred:

We also hold that letters of direction/3 must be released to the public, but where a letter simply seeks to guide a teacher's future conduct, does not identify an incident of substantiated misconduct, and the teacher is not subject to any form of restriction or discipline, the name of the teacher and other identifying information must be redacted.

John Doe v. Bellevue School District #405, 164 Wn.2d at 199.
(Footnote omitted.)

A citizen's right to privacy is highly respected in the State of Washington. Chapter 10.97 RCW; *State v. Breazeale*, 144 Wn.2d 829,

31 P.3d 1155 (2001); *John Doe v. Bellevue School District #405*,
supra; *Bedford v. Sugarman*, 112 Wn.2d 500, 772 P.2d 486 (1989).

As stated in *Bedford*, 112 Wn.2d at 508:

Privacy rights have been said by some to "emanate" from the "penumbras" of several constitutional provisions. *Griswold v. Connecticut*, 381 U.S. 479, 14 L. Ed. 2d 510, 85 S. Ct. 1678 (1965). Current interpretation, however, holds that "the 'right of privacy' is founded in the Fourteenth Amendment's concept of personal liberty". *Whalen v. Roe*, 429 U.S. 589, 598 n.23, 51 L. Ed. 2d 64, 97 S. Ct. 869 (1977); see *Carey v. Population Servs. Int'l*, 431 U.S. 678, 684, 52 L. Ed. 2d 675, 97 S. Ct. 2010 (1977).

Bedford v. Sugarman, 112 Wn.2d at 508.

Without a stronger reason than "because the court could," the court's exercise of discretion to deny Ms. Young's motion is an abuse thereof. Where the general public has no legitimate right to access non-conviction data, and the court has authority to protect an accused's privacy, a decision not to do so is an untenable abuse of discretion.

C. The statutes are unambiguous so that there is no need for statutory construction; but if there is such a need herein, the ambiguity must be resolved in favor of appellant.

Statutory interpretation is only allowed where the statute is ambiguous. *State v. Q.D.*, 102 Wn.2d 19, 685 P.2d 557 (1984) (Unambiguous statute clear on its face is not subject to the rules of statutory construction). See also *State v. McCollum*, 88 Wn.App. 977, 947 P.2d 1235 (1997); *State v. Bourne*, 90 Wn.App. 963, 954 P.2d 366 (1998); *State v. Ustimenko*, 137 Wash.App. 109, 151 P.3d

256 (2007).

The statutes referenced herein are unambiguous and are in harmony with each other. RCW 13.04.240 states that a juvenile offense is not conviction of a crime. RCW 13.40.020(19) defines a juvenile offense as an act that would be a crime **if committed by an adult**. Those two statutes say the same thing in different language. RCW 13.40.240, enacted in 1977 and never amended, clarifies that the words "juvenile delinquent" in statutes "shall be construed as meaning juvenile offenders or the commitment of an offense by juveniles as defined by this chapter." That specific statute is also in harmony with the others. As stated by our Supreme court, "Juveniles do not commit crimes." *Monroe v. Soliz*, 132 Wn.2d 414, 419, 939 P.2d 205 (1997). See also *In re Frederick*, 93 Wn.2d 28, 30, 604 P.2d 953 (1980); *In re Weaver*, 84 Wn.App. 290, 929 P.2d 445 (1996).

Therefore, since Ms. Young's did not commit a crime when her juvenile offense conviction was entered against her, that record cannot be the predicate to change the trial court's mandatory duty regarding her request that the records "shall be deleted," and Ms. Young's juvenile offense conviction, not being a "felony or gross misdemeanor" cannot be utilized to authorize a *discretionary* ruling by the proviso in RCW 10.97.060 that the court "may, at it's option, refuse to make the deletion . . ." if the applicant has a previous

"conviction of a felony or gross misdemeanor." The review herein, being a question of law and statutory interpretation, is reviewed de novo.

In the event the court determines the statute to be ambiguous:

If this court should also hold that the statutes are ambiguous, then they would be subject statutory construction. An analysis under statutory construction requires that, in criminal cases the rule of lenity applies. Under the rule of lenity, any ambiguity is to be resolved in favor of a defendant, i.e., Ms. Young. *In re Personal Restraint of Mahrle*, 88 Wn.App. 410, 415, 945 P.2d 1142 (1997); *State v. Lively*, 130 Wn.2d 1, 14, 921 P.2d 1035 (1996); *State v. Bourne*, 90 Wn.App. at 969 (rule of lenity requires an ambiguous statute to be interpreted most favorably to the defendant); *State v. Seek*, 109 Wn.App. 876, 37 P.3d 339 (2002) (Ambiguous statutes should be interpreted in a way that provides lenity to defendants.)

Ms. Young showed the trial court that the records she sought to destroy were "non-conviction data" and protected by the Criminal Records Privacy Act. She showed that the general public has no legitimate reason to access those records since they were "non-conviction data." She showed the trial court that under RCW 10.97.110 she has the right to seek civil enjoiner, damages, and attorney's fees. She showed the trial court that under RCW 10.97.120 a person who disseminates non-conviction data is guilty of

a misdemeanor. She showed that her juvenile offense was not a crime.

Because the court records are now published on the internet, those records that become non-conviction data but are published by the court and thereby "disseminated" which is prohibited by the Criminal Records Privacy Act. RCW 10.97.050(6). Ms. Young's rights under that act become meaningless if her non-conviction data records are spread throughout the internet to an audience that cannot even be identified for civil or criminal remedies. The court records themselves became guilty of the misdemeanor defined in RCW 10.97.120.

GR 15(h) was designed primarily to eliminate this dilemma. The trial court abused its discretion by denying Ms. Young the relief she so desperately needs.

D. The trial court misinterpreted the continuum of laws that require the court to grant both expungement (sealing) and destruction of non-conviction criminal records.

Our Supreme Court has spoken: "Juveniles do not commit "crimes." Instead they commit "offenses" or "violations," which the Legislature has defined as acts which, if committed by an adult, would constitute a crime. RCW 13.40.020(19)." *Monroe v. Soliz*, 132 Wn.2d 414, 419, 939 P.2d 205 (1997). In *Monroe*, after the juvenile was convicted of an offense in juvenile court, he was committed to

Green Hill School, a juvenile correctional facility. While there, he engaged in extreme misconduct including assaults against the staff and other residents. DSHS impaneled an administrative hearing pursuant to RCW 13.40.280 which concluded that Monroe was "a continuing and serious threat to the safety of others at the institution." Monroe was transferred to an adult correction facility. Monroe sued Jean Soliz, the Secretary of the Department of Social and Health Services (DSHS) and Chase Riveland, the Secretary of the Department of Corrections (DOC) in a class action lawsuit. Monroe alleged that RCW 13.40.280 was unconstitutional because it placed him in adult status but did not provide him with a jury trial. He prevailed in his lawsuit and the State appealed to our Supreme Court which retained the case for review and reversed. The final analysis was that Monroe did not lose his juvenile status by the transfer to adult correction facilities and because he was a juvenile he did not have a right to a jury trial. Pertinent to the issue Ms. Young presents here for review, our Supreme Court stated:

By proceeding in a juvenile court the State protects offenders "against [the] consequences of adult conviction such as the loss of civil rights, [and] the use of adjudication against him in subsequent proceedings. . . ." *Kent v. United States*, 383 U.S. 541, 557, 86 S. Ct. 1045, 1055, 16 L. Ed. 2d 84 (1966). /3 Washington law permits the State to destroy all juvenile records when a juvenile offender attains the age of 23, while an adult conviction is permanently engraved on

the defendant's record. RCW 13.50.050(23)(a).³
Monroe v Soliz, 132 Wn.2d at 420-21. (Footnote omitted.)

There are instances where conviction of a juvenile offense can be used to against the juvenile as though he or she were convicted of a crime. However, in each instance where juvenile offense convictions are permitted to be used as if they were "criminal convictions", there is a specific statute that authorizes that use. The Criminal Records Privacy Act contains no such specific language to justify treating Ms. Young's juvenile offense conviction, which is not criminal because she was not an adult, as a "gross misdemeanor" for the purpose of denying her motion to expunge and/or destroy her non-conviction court records.

E. The trial court's findings of fact are erroneous.

Finding of fact number 3 classifies Ms. Young's juvenile conviction as "conviction of a gross misdemeanor." That finding is erroneous as a matter of law. Ms. Young was convicted of an "offense" (or entered into a diversion) which is not a crime unless it is committed by an adult. RCW 13.40.020(19). To classify it as a "crime" renders the definition of "offense" meaningless. Courts should interpret and construe statutes to give effect to all the language used, with no portion rendered meaningless or superfluous.

³ Although RCW 13.50.050(23)(a) was renumbered and is now subsection (22)(a), the language in that subsection was not changed.

Davis v. Dep't of Licensing, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (citing *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)).

No statute should be read in isolation from other related statutes. As stated in *Seto v. American Elevator, Inc.*, 159 Wn.2d 767, 154 P.3d 189 (2007):

In deriving the meaning of a statute, courts should "read the statute in its entirety," rather than isolating individual phrases. *Keller*⁴, 143 Wn.2d at 277. Construction that would render a portion of a statute "meaningless or superfluous" should be avoided, as should a construction that would yield "unlikely" or "absurd" results. *Id.*

Seto v. American Elevator, Inc. 159 Wn.2d at ____.

See also *State v. Hogan*, 145 Wn.App. 210, 192 P.3d 915 (2008) (This court interprets and construes statutes to give effect to all the language used, with no portion rendered meaningless or superfluous. *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (citing *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)).

The decision of the trial court herein rendered Ms. Young's right to privacy under the Criminal Records Privacy Act, Chapter 10.97 RCW, and her rights as a juvenile not to be convicted of a crime, meaningless. The trial court erred as a matter of law and/or abused its discretion.

⁴ *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001).

Finding of fact number 4 is actually a conclusion of law.⁵ The court concluded that the juvenile "conviction" was grounds to deny appellant's motion. As stated above, without specific language in the statute, RCW 10.97.060(2), that it applies to juveniles, RCW 13.04.240 precludes such a conclusion of law.

Finding of fact number 5 is also actually a conclusion of law and should be interpreted as such. As stated above, the impact on RCW 10.97.060(2) is minimal and wholly discretionary by the court. The final paragraph of RCW 10.97.060 specifically authorizes the court, notwithstanding any other language, to exercise discretion to grant destruction of the records. Furthermore, as argued above, the conclusion erroneously interprets the statute. *Monroe v. Soliz, supra*. "Juveniles do not commit crimes." The felony or gross misdemeanor referenced in RCW 10.97.060(2) would only be committed by Ms. Young if she were an adult at the time, which she was not. Where the court is granted authority to utilize a juvenile conviction for imposition of adult statute penalties or intrusive actions, either the adult statute or the juvenile statute gives specific authority to do so. See *Cheatham, supra, Q.D., supra, A, B, C, D, E, supra*, and *Acheson, supra*. As stated above, the trial court's interpretation of the statute was erroneous.

⁵ See *McKinnon v. White*, 40 Wn.App. 184, 698 P.2d 94 (1985), page 188, footnote 1.

Finding of Fact number 6 is also a conclusion of law in which the court erroneously interpreted the statute. RCW 13.04.011(1) specifically states:

(1) "Adjudication" has the same meaning as "conviction" in RCW 9.94A.030, and the terms must be construed identically and used interchangeably; . . . RCW 13.04.011(1).

Chapter 9.94A RCW is the sentencing reform act. It applies sentencing of felony convictions. RCW 9.94A.030 defines conviction in subsection 12 as:

(12) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty. RCW 9.94A.030(12).

Neither statute states that it is a definition of "adjudication" and "conviction" as meaning the same thing, just that the two words must be construed identically and used interchangeably. This obviously refers to orders and forms that are used in the sentencing process to avoid attempts to make distinctions if the language is different. In order for the court's finding of fact, which is actually a conclusion of law, to have the meaning ascribed to it by finding of fact number 6, the enactment of RCW 13.04.011(1) would have to amend by implication RCW 10.97.060, RCW 13.04.240, RCW 13.40.020(15), RCW 13.40.240, and RCW 13.50.050(23), as they existed prior to the enactment of RCW 13.04.011(1). None of those statutes have been changed or even mentioned in the legislation.

Former RCW 13.40.020(15) is identical to the current RCW 13.40.020(19), and both read:

"Offense" means an act designated a violation or crime if committed by an adult under the law of this state, under any ordinance of any city or county of this state, under any federal law, or under the law of another state if the act occurred in that state."

Therefore the meaning ascribed by the trial court herein to RCW 13.04.011(1) leads to an absurd result by nullifying five other statutes by implication. It is more likely that RCW 13.04.011(1) is intended to avoid confusion when sentences are imposed under Chapter 9.94A RCW, particularly since it relates to the words "conviction" and "adjudication" but does not amend the statute that defines "offense" as "a violation or crime if committed by an adult . . .". Any other interpretation, and the one applied by the trial court herein, leads to an absurd result. As stated above, in *Seto*:

In deriving the meaning of a statute, courts should "read the statute in its entirety," rather than isolating individual phrases. *Keller*⁶, 143 Wn.2d at 277. Construction that would render a portion of a statute "meaningless or superfluous" should be avoided, as should a construction that would yield "unlikely" or "absurd" results. *Id.*

Seto, supra.

Furthermore, amendment of statutes by implication is disfavored. *State v. Dydasco*, 85 Wn.App. 535, 933 P.2d 441 (1997); *Local 497, Int'l Bhd. of Elec. Workers v. PUD 2*, 103 Wn.2d 786,

⁶ *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001)).

698 P.2d 1056 (1985); *Washington State Welfare Rights Org. v. State*, 82 Wn.2d 437, 511 P.2d 990 (1973). As stated in the case of *Nearing v. Golden State Foods*, 52 Wn. App. 748, 751-52, 763 P.2d 840 (1988):

Repeal by implication occurs only when:

(1) the later act covers the entire subject matter of the earlier legislation, is complete in itself, and is evidently intended to supersede prior legislation on the subject; or (2) the two acts are so clearly inconsistent with, and repugnant to, each other that they cannot be reconciled and both given effect by a fair and reasonable construction.

State v. Wilson, 39 Wn.App. 883, 885, 696 P.2d 605 (1985) (citing *In re Chi-Doo Li*, 79 Wn.2d 561, 563, 488 P.2d 259 (1971)). /3

3/ Const. art. 2, SS 37 provides: "Revision or Amendment. No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length." This provision has been construed to allow amendment by implication in the case of "complete acts which incidentally or impliedly amend prior acts." *Vasey v. Snohomish Cy.*, 44 Wn. App. 83, 97, 721 P.2d 524 (1986); accord, *Naccarato v. Sullivan*, 46 Wn.2d 67, 278 P.2d 641 (1955). The housekeeping statute is not "complete," because it does not purport to deal with the subject matter of RCW 4.16.170.

Nearing v. Golden State Foods, 52 Wn.App. at 751-52.

Like the holding in *Nearing*, the amendment to RCW 13.04.011(1) did not deal with five other related statutes, and specifically did not include amendment of the existing definition of "offense" as a "violation or crime if committed by an adult." See also *Detention of R.S.*, 124 Wn.2d 766, 881 P.2d 972 (1994)(When

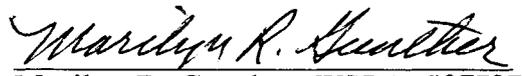
the various provisions of a chapter can be harmonized there is no repeal or amendment by implication. Citing *Mistereck v. Washington Mineral Prods., Inc.*, 85 Wn.2d 166, 168, 531 P.2d 805 (1975).

V. CONCLUSION

Because the trial court denied appellant's motion, she is still subject to the unlimited public access to her non-conviction data produced when she was an adult on the basis of a nine year old juvenile offense that was apparently a diversion. The trial court erred as a matter of law and as an abuse of discretion. This matter should be reversed with instructions to grant the relief requested by Ms. Young.

DATED: January 5, 2008.

Respectfully submitted,


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STATE OF WASHINGTON
BY _____
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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON)	
)	
Respondent,)	No. 37985-6-II
)	
vs.)	
)	CERTIFICATE
JACKLYNN YOUNG,)	OF SERVICE
)	BY MAILING
Appellant.)	
_____)	

I hereby certify that I personally served or mailed a copy of Appellant's Opening Brief to opposing counsel of record on January 8, 2009.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 8th day of January, 2009.


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